IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.3837 M OF 2005

DATE OF DECISION: MARCH 01, 2007

Subash Gajri

.....Petitioner

VERSUS

Gurmit Kaur and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Rahul Sharma, Advocate,
for the petitioner.

Mr. S.S.Rangi, Advocate,
for the respondents.

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RANJIT SINGH, J.

Smt.Gurmit Kaur and her husband Surinder Singh filed a joint complaint on 23.12.1997 alleging that on 14.12.1997, complainant Gurmit Kaur was dragged into the house and given beating by the petitioner and his family members including his wife, daughters and sons. It is alleged that her husband, Surinder Singh, was also given beating when he came out in her support. This joint complaint was filed alleging offences under Sections 323, 324, 325 and 34 IPC. Gurmit Kaur appeared in support of the allegations made in the complaint as PW3 and also examined two other witnesses, Gurjit Singh (PW1) and Kamlesh (PW2), who were stated to be the eye witnesses of the incident. The Chief Judicial Magistrate, Fatehgarh Sahib vide his order dated 14.5.1999,

summoned the petitioner and his other family members for an offence under Section 323/34 IPC only. Later, while facing the proceedings, the petitioner learnt that Smt.Kamlesh (PW2) never appeared as a witness in support of the case of the complainant. In this regard, she has given an affidavit, Annexure P-3, to say that on 15.4.1998 she had been taken by complainant Gurmit Kaur to the Chamber of Advocate Sanjeev Kapoor, District Court, Fatehgarh Sahib, and made to sign on papers on the pretext that she was required to witness the visit of complainant Gurmit Kaur to the Court. In the said affidavit, Kamlesh (PW2) has further disclosed that on learning about the papers having been used to record her statement, she appeared before the Judge and stated that she never gave any evidence in the Court against Renu Sood or her family members. She also stated that she did not see any fight between the parties. On the basis of this affidavit, enquiry was marked by the Sessions Judge on the administrative side. It is alleged that the joint complaint is not maintainable and is defective and application seeking rejection of the complaint accordingly was filed before Judicial Magistrate, Fatehgarh Sahib on 15.5.2003. This application of the petitioner, however, was dismissed but application moved by the complainant for deletion of one of the name i.e. Surinder Singh was accepted on 15.5.2003. Revision against the same order was not entertained on the ground that learned Sessions Judge was dealing with the matter on administrative side and under these circumstances, the petitioner filed the present petition impugning the complaint and the summoning order and also all the subsequent proceedings on various grounds. In addition to other pleas, it is alleged that valid

complaint came into existence only on 15.5.2003 when name of Surinder Singh was deleted as joint complaint could not have been maintained. It is accordingly pleaded that an incident of 14.12.1997 was validly complained on 15.5.2003 and, thus, limitation for taking cognizance of the offence under Section 323 IPC had gone passed by the time. The complaint was filed but the same could not be continued in view of the bar of limitation as legislated under Section 468 Cr.P.C.

This Court, on 12.7.2006, had directed Sessions Judge, Fatehgarh Sahib, to send the report of enquiry conducted in respect of complaint made by Kamlesh Rani wherein she had alleged that she did not ever appear as a witness in this case and her signatures were obtained by mis-leading her, as disclosed in her affidavit, Annexure P-3. A communication dated 4.8.2006 was received from the District and Sessions Judge, Fatehgarh Sahib in response to the order dated 12.7.2006. It is disclosed that papers of administrative enquiry regarding statement of Kamlesh Rani (PW2) are not available in the office, and that statement of Kamlesh Rani (PW2) was recorded on 14.4.1998 by Chief Judicial Magistrate, Fatehgarh Sahib, which she signed in English.

I have heard learned counsel for the parties.

Mr.Rahul Sharma, learned counsel appearing for the petitioner submits that the Magistrate could not have taken cognizance of this case after an expiry of period of one year from the date of offence since the petitioner is summoned only under Section 323 IPC, which is punishable with one year R.I. He would refer to the provisions of Section 468 Cr.P.C. to say that the action of Magistrate

in taking cognizance of the offence in this case would be barred. On the other hand, Mr.S.S.Rangi, counsel for the respondents, would contend that the case was filed in time and the respondents cannot be made to suffer on account of delay in taking cognizance of the offence. He would urge that proceedings should not be quashed under Section 482 Cr.P.C. on the ground of limitation, as is being sought on behalf of the petitioner.

Section 468 Cr.P.C. creates a bar for taking cognizance of an offence after expiry of period of limitation and reads:-

> "468. Bar to taking cognizance after lapse of the period of limitation.-(1)Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
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> (2)The period of limitation shall be-
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> (a) six months, if the offence is punishable with fine only;
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> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
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> (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
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> (6) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe

punishment."

Accordingly a period of one year is provided as a limitation in respect of those offences, which are punishable with imprisonment for a term not exceeding one year. As the offence for which the petitioner has been summoned is under Section 323 IPC and is punishable with an imprisonment for one year, the limitation in this case would be one year. Section 468 Cr.P.C. cannot be read in isolation as the commencement of period of limitation is regulated by the provisions of Section 469 Cr.P.C., which reads as under:-

> "469. Commencement of the period of limitation.-(1) The period of limitation, in relation to an offence, shall commence,-
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> (a) on the date of the offence; or
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> (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
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> (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
>
> (2) In computing the said period, the day from which such period is to be computed shall be excluded."

It would be thus clear that the period of limitation in

relations to an offence would commence from different dates depending upon three situations, as noticed in Section 469 (a) (b) and (c). Thus, the period of limitation would commence from the date of offence or from some different dates depending upon the knowledge about the offence or the identity of the offender. The period of limitation accordingly would commence from the date of offence if the identity of the offender as well as the offences is known. The complaint in this case in regard to an incident of 14.12.1997 was filed on 23.12.1997. From the contents of the complaint, it is clear that the identity of the offender as well as the offences was clearly known to the person aggrieved of the offence i.e. the complainants. The complainants had also made allegation of specific offences under various Sections of IPC. Thus, the commission of offence as well identity of the offender was known to the complainants. In this view of the factual position, it would be safe to say that provisions of Section 469 (b) and (c) would not come into play in this case to determine limitation. It would be a case where the person aggrieved of the offence was knowing the offence as well as the offender from the date of offence itself i.e. with effect from 14.12.1997. The limitation for this purpose would as such, commence from the date of offence. It is now required to be seen as to when the cognizance of the offence in this case was taken on the basis of the complaint filed by the complainant.

The learned counsel for the petitioner would contend that even the filing of the complaint was beyond the period of one year as the joint complaint filed on 23.12.1997 is clearly not maintainable. He would refer to the fact that on an objection raised in this regard by the

petitioner, application was moved for withdrawing the name of Surinder Singh, which was also aimed at protecting his service as allegations for fabricating the evidence were made against him. The counsel, as such, would contend that valid complaint came into existence only on 15.5.2003 with respect to the incident dated 14.12.1997. In support of his submission, he has drawn my attention to the case of ***Santokh Singh and another Vs. Gurpal Singh and another,*** 1995 (3) R.C.R. (Criminal) 357. In the said case, this Court has viewed that a joint complaint by four persons is not maintainable. It is also held that it is a procedural defect and complainants may exercise option as to who wanted to continue with the complaint. This part of the submission was not very seriously disputed by counsel for the respondents, who instead submitted that the complaint was filed within a period of limitation and the complainant cannot be made to suffer or complaint rendered infructuous by the act of Court in taking cognizance of the offence after the expiry of period of limitation. In this regard, he has referred to the cases of ***Kailash Dan Vs. State of Rajasthan and Anr.***, 2006 (1) RCR (Criminal) 488, ***Bharat Damodar Kale and anr. Vs. State of A.P.,*** 2003 (4) RCR (Criminal) 924 and ***Basavantappa Basappa Bannihalli and another Vs. Shankarappa Marigallappa Bannihalli,*** 1990 Cri.L.J. 360.

It may be seen as to when a valid complaint came to be filed in this case. Though in Santokh Singh's case (supra), this Court found a joint complaint, revealing only a procedural defect and not going to the root of the matter and permitted deletion of the names of other complainants, yet it did not develve into the fact as to when

such a complaint could be considered to have been validly instituted so far as the period of limitation is concerned. In fact, in this case question of limitation did not arise having regard to the nature of offences alleged in the complaint. If it is viewed that joint complaint is not maintainable, then it will be safe to say that valid complaint came into existence only on deletion of the names of other complainants from this joint complaint as till then it would not be maintainable. Thus, it can be said that valid complaint came to be filed only on 15.5.2003, which was well beyond the period of limitation of one year from the date of incident. One may notice that in ***State of Punjab v. Sarwan Singh***, 1981 Crl.L.J.722, the Hon'ble Supreme Court held that the object of Criminal Procedure Code in putting a bar of limitation on prosecution was clearly to prevent the parties from filing cases after a long time, as a result of which the material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of offence. Further, in ***Moti Pathak and others v. State of U.P.***, 1988 (2) Crimes page 659, it was observed that the plea of bar of limitation can be raised at any stage of proceedings and that even when it was not raised, the Magistrate should have considered his power and authority in the light of sections 468 and 473 Cr.P.C. Having regard to the ratio of law laid down in Moti Pathak's case (supra), it can be said that Magistrate himself is required to consider the aspect of limitation even if such a plea is not raised before it. If that be so, the plea raised on behalf of the respondents that powers under Section 482 Cr.P.C. be not exercised to decide the issue limitation may not be acceptable.

Even if it is assumed for the sake of arguments that the complaint in this case was filed within time, the petitioner was summoned on 14.5.1999. A perusal of Section 468 Cr.P.C. clearly provides that no Court shall take cognizance of an offence after the expiry of period of limitation as provided therein. Thus, in this case the limitation is to be calculated from the date of offence to the date of taking cognizance and if it is beyond the period of one year, the action of taking cognizance by the Magistrate would be barred and without jurisdiction in view of the provisions of Section 468 Cr.P.C. As already noticed, the offence and the offender were known to the complainant on the date he filed the complaint on 14.12.1997. That being so, the Magistrate could have taken cognizance of this offence upto a period of one year commencing from the said date i.e. upto 14.12.1998. There is nothing on record to indicate as to when the cognizance of offence in this case was taken. It may require consideration as to what would be the date of taking cognizance of an offence in this case. As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. This was so observed by the Hon'ble Supreme Court in Narayandas Bhagwandas Madhavdas v. The State of W.B., AIR 1959 Supreme Court 1118. Accordingly, the issuance of search warrant for the purpose of investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance is taken of an offence. It is further observed that it is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Ch.XVI of the Code of

Criminal Procedure or under Section 204 of Ch.XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance. In Darshan Singh Ram Kishan v. The State of Maharashtra, 1971(2) Supreme Court Cases 654, it was observed that taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. It is said that cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence and this is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon the police report, prima facie, he does so of the offence or offences disclosed in such report.

In ***Cref Finance Ltd. Vs. Shree Shanthi Homes (P) Ltd. and another,*** (2005) 7 Supreme Court Cases 467, the Hon'ble Supreme Court observed that the cognizance is taken of the offences and not of the offender and, therefore, once the Court, on perusal of the complaint, is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage and proceeds further in the matter, it must be held to have taken cognizance of the offence. In this case only, the Hon'ble Supreme Court held that one should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the

material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. Since the valid complaint, as already held in this case, came into existence only on 15.5.2003, it can be held that the Magistrate could not have validly taken cognizance of the offence in this case on any date prior to 15.5.2003. Prior to this date, there was no valid complaint, which could have invited consideration of the Magistrate. On consideration, prior to 15.5.2003, the Magistrate could be expected to hold that joint complaint was not maintainable. In this view of the factual position in the present case, the respondents would not be in a position to take advantage of the ratio of law laid down in Kailash Dan' case, Bharat Damodar Kale's case (supra) etc., referred to above. It was not because of any act of the court which resulted in delay of taking cognizance but mainly on account of lapse on the part of the complainant in filing the joint complaint that has led to the present situation. The provisions of Section 468 Cr.P.C. otherwise clearly stipulates that for the purpose of this Section, period of limitation in relation to offences, which may be tried together, shall be determined with reference to the offence, which is punishable with more severe punishment. In ***State of Himachal Pradesh Vs. Tara Dutt and another,*** AIR 2000 Supreme Court 297, the Hon'ble Supreme Court while referring to sub-section (3) of Section 468 Cr.P.C., held that limitation provided for taking cognizance is in respect of offence charged and not in respect of the offence finally proved. In this very case, the Hon'ble Supreme Court referred to its earlier decision in Sarwan Singh's case (supra). In the said case, the charge was framed under Sections 408 and 406 IPC but ultimately conviction

was only under Section 406 IPC. The High Court in this case allowed the appeal and acquitted the person mainly on the ground that prosecution launched against the respondent was clearly barred by limitation under Sections 468 and 469 Cr.P.C. The Hon'ble Supreme Court while dismissing the appeal filed by the State of Punjab observed as under:-

> "The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein is nonest. For these reasons given above, we hold that the point of law regarding the applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds."

However, in Tara Dutt's case (supra), it is observed that provisions of sub-section (3) of Section 468 Cr.P.C. were not considered while deciding Swaran Singh's case (supra). In the present case, sub-section (3) of Section 468 may not apply, as the petitioner in this case has only been charged under Section 323 and not under any offence as in the cases of Tara Dutt and Swaran Singh (Supra). Thus, it will be a case where provisions of Section 468 would get attracted. In Swaran Singh's case(supra), it is said by the Court that the object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in

Article 21 of the Constitution of India. It was further observed that it is of utmost importance that any prosecution whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The limitation is required to be determined on the basis of the offence/offences charged and not in respect of offence finally proved. The offence charged in this case is under Section 323 IPC. Having regard to the decision afore-mentioned, the prosecution against the petitioner would be barred by limitation in view of the provisions of Section 468 Cr.P.C.

It would also require consideration that the prosecution launched in the year 1997 is still being pursued even after a lapse of 10 years and the offence alleged against the petitioner is only under Section 323 IPC. I do not consider it essential to refer to various decisions where the Courts have directed quashing of the proceedings only due to delay as delay in itself is said to have resulted in depriving a person of his right to life and liberty as enshrined under Article 21 of the Constitution of India. This may be an added reason calling for interference in the present case.

The present petition is accordingly allowed and the complaint and all the proceedings against the petitioner are hereby quashed.

March 01, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**